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FEDERAL COMMUNICATIONS COMMISSION  
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Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
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Carriage of the Transmissions )  
Of Digital Television Broadcast Stations )  
 )  
Amendments to Part 76 of the Commission's Rules )  
 )  
To: The Commission )

CS Docket No. 98-120

**COMMENTS OF THE STATION REPRESENTATIVES ASSOCIATION, INC.**

Giving effect to the statutory imperatives embodied in Section 307(b) of the Communications Act, the Commission has allotted television broadcast spectrum to communities spread across the United States and taken other appropriate actions to achieve policy objectives that have come to be appreciated by the courts, Congress and ultimately the American public under the umbrella concept of localism. The Commission's cable carriage rules, most especially its must-carry principle but also the web of associated requirements, were crafted to preserve the public's access to local television service in the face of the disruption and injury that cable operations could impose on this service.

The Commission's carriage rules, on their face, apply only to analog television services. Yet Congressional fiat and Commission decisions that obligate broadcasters to migrate their existing service to digital and, in time (by 2006), surrender their existing analog capacity<sup>1</sup> require, as a corollary, that the cable carriage rules be modified to apply to digital broadcast

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<sup>1</sup> To be precise, licensees in most cases may choose to surrender their analog or digital channels. But in either case, they will have to proceed thereafter in a digital mode and abandon their analog operations.

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services as well.<sup>2</sup> The transition to digital television will be the equivalent to jumping from one trapeze to another without a net (no one guarantees a digital audience, for example).<sup>3</sup> Unless the Commission adopts suitable DTV carriage rules comparable to those applicable to analog, the transition may well become a trapeze jump in which the timing of the swings has not been calibrated properly or at all.

The Station Representatives Association, Inc. ("SRA") has a vital stake in this proceeding, just as it did in prior cable carriage rulemakings. SRA is an association of television broadcast station representatives. Station representatives serve as sales agents for broadcast stations in connection with the sale of station time to national and regional advertisers. On an industry-wide basis, these sales account for approximately 40 to 50 percent of stations' revenues. For smaller stations and smaller-market stations, this percentage is likely to be even higher. In addition to selling spot time, station representatives also provide stations with independent advice and information on a wide range of important matters, including industry trends, economic conditions, station programming and marketplace strategies.

Television station representatives have long been concerned about the threat of cable television to the development and viability of local television broadcasting. Accordingly, SRA has paid special attention to the Commission's must-carry rules for as long as any other

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<sup>2</sup> In the case of some of these rules, it can be argued that no action by the Commission is required to make them applicable to local stations' digital services as well. Where that is the case, the Commission should promptly clarify that this is so.

<sup>3</sup> Although the Balanced Budget Act of 1997 provides that the analog service need not be turned off if a significant number of consumers still lack access to DTV signals in 2006, these provisions provide little comfort to broadcasters that will be stranded astride of two services, with some of their audience receiving the digital service and some relying on the analog service. See Balanced Budget Act of 1997, Pub. L. No. 105-33, § 3003, 11 Stat. 251, 265-66 ("*Balanced Budget Act of 1997*"). Operating in this fashion is extremely expensive both in terms of the physical plant (e.g., maintaining two transmitters and antennas, paying two sets of power bills,

party, and longer than most. Fifteen years ago, SRA published a report entitled "The Must Carry Rules – The Case for Local Television Stations on Cable." This report was widely circulated in the broadcast and advertising industries and to all members of Congress. Just as SRA concluded then, it now believes that the public interest requires the application of carriage obligations to the new DTV broadcast signals.

### **I. BASIC POLICY IMPERATIVES**

The business that SRA members conduct on behalf of local stations is based on the commercial markets that have developed as a result of the Commission's various determinations implementing Section 307(b). The localism promoted by Section 307(b) is best understood as the service to the community rendered by local television stations. This service is a complicated mix of programming and other services that involves network and syndicated, as well as local, programming plus a great deal more, such as public service announcements, accommodation of candidate and ballot messages, and other good citizenship undertakings of a rich and diverse variety. "Service localism" is matched by, and depends on, "marketplace localism."<sup>4</sup> While SRA members have an important role in advising stations on programming decisions that relate to service localism, they play an even more critical role in facilitating the workings of the local commercial markets that have resulted from the Commission's Section 307(b) decisions. These decisions include the allocation to local stations of DTV channels that replicate the current market structure.

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acquiring two sets of programming rights or, in many cases, different programs altogether, etc...) and in terms of advertising, given the fractured nature of the audience.

<sup>4</sup> This linkage is confirmed by the fact that key Commission regulatory policies – for example multiple ownership, cable regulation and network /affiliate rules – are rooted in market definitions established by private parties, like Nielsen and Arbitron.

SRA, therefore, has a vital stake in how both service and marketplace localism are transplanted in the new digital environment. The DTV transition is potentially disruptive to existing markets. Markets hate uncertainty. Uncertainty about whether viewers will have access to the digital signals of their local stations will discourage advertiser support of the new digital services, deter programmers, scare off investors, and spook consumers who might otherwise buy sets to receive the new digital services.

Consequently, SRA believes that the Commission must promptly transplant, with suitable adjustments, its analog cable carriage rules into the new digital arena. Effective carriage rules are even more necessary for the digital environment, because over-the-air local television will have no established base in the digital marketplace. And cable operators will have even greater leverage and incentives to discriminate in carriage arrangements in favor of cable programming to the detriment of local broadcast services.

Nor should the Commission leave these issues to the marketplace or to private party negotiations. With the compulsory license that allows cable to retransmit broadcast signals, retransmission consent and various other regulations derived from Section 307(b), this is not, and never has been, an unregulated marketplace. In fact, it is a marketplace that has been strongly, and on the whole positively, shaped by judicious and restrained regulation.

But even if this were not the case, the Commission does not have the discretion to abstain from imposing appropriate digital carriage rules. The Cable Act of 1992 requires the Commission to adapt its analog carriage principles to accommodate digital signals<sup>5</sup> and the

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<sup>5</sup> Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, § 4, 106 Stat. 1460, 1472. Section 4 of the 1992 Cable Act is codified at 47 U.S.C. § 534.

Telecommunications Act of 1996 and the Balanced Budget Act of 1997 further confirm the force of this directive.<sup>6</sup> The Commission simply must proceed with digital carriage rules.

Nor may it tarry further. The 1992 Cable Act directed the Commission to proceed with carriage rules at the time it adopted the digital standard (nearly two years ago).<sup>7</sup> The Commission's delay has permitted serious, anti-consumer cable compatibility problems to develop in the meantime. In response to government mandates and other initiatives, broadcasters are already launching digital operations. They have done so in reliance on the effective resolution of cable carriage issues. Congress expected the same thing. Accordingly, the Commission must proceed in this rulemaking with a heightened sense of urgency.

Make no mistake about it: the vitality, even the basic survival, of local television service is threatened by the transition to digital – a transition that broadcasters realize they must nonetheless undertake. Although local broadcasters should not be guaranteed a ticket to the future, they (and even more so, the public they serve) are entitled to fair and clear carriage rules that are no less meaningful and needed than those that structure the analog marketplace. Pursuant to statutory mandate and compelling policy considerations, therefore, the Commission must proceed promptly to adopt effective and fair digital carriage rules. In the second section of these comments, SRA submits its views as to what these rules should be.

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<sup>6</sup> See Section 336 of the Communications Act, as amended by the Telecommunications Act of 1996, Pub. L. No. 104-104, § 201, 110 Stat. 56, 107-08 (authorizing the Commission to assign DTV channels to existing broadcasters, requiring the return of one broadcast channel, and implying that DTV signals will be subject to the cable carriage rules, except that ancillary and supplementary services will not be entitled to must-carry). See also *Balanced Budget Act of 1997* (mandating the DTV transition and the return of broadcast spectrum by 2006, subject to certain exceptions).

<sup>7</sup> 47 U.S.C. § 534(b)(4)(B).

## II. PROPOSED CARRIAGE RULES

### A. The Must-Carry Principle Is Mandated By Statute And Serves Vital Public Policy Needs.

In requiring the adoption of analog must-carry rules, Congress found on the basis of substantial evidence that cable systems had strong incentives to favor cable programming over local broadcast service and that non-carriage by cable systems would cause the public's local television service to erode and wither. It also found that the burden on cable systems of the must-carry rules was manageable, particularly given cable's growing channel capacity. The history of the subsequent court challenges will doubtless be well-chronicled by others, especially the National Association of Broadcasters, which effectively led the broadcast industry's defense of the rules. It is enough here to point out that the Supreme Court twice upheld the statutory must-carry mandate, and those holdings apply to implementation of that mandate in the digital environment.<sup>8</sup>

Others will also describe in greater detail how the case for the must-carry principle in the digital environment is even more compelling than is the case for analog must-carry. The two cases consist of many of the same ingredients – a clear and repeated Congressional directive, strong incentives for cable to exclude or discriminate against local signals, an irrefutable link between non-carriage and weakened service, and a continuing increase in cable capacity that should absorb the burden of carriage, which in the digital environment would still be subject to the one-third cap and the small system exceptions that apply in the analog environment. The case for digital must-carry is indeed far stronger because the government has required broadcasters to build out digitally by 2002 (for noncommercial

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<sup>8</sup> *Turner Broadcasting System, Inc. v. FCC*, 520 U.S. 180 (1997); *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 6221 (1994).

broadcasters by 2003) and will reclaim analog spectrum by 2006, and because there is no embedded base for digital broadcast viewership.

In principle, cable systems will have to carry twice as many stations during the transition period, but only during the transition period. And not all the stations in a market will launch digital operations at the same time. They are likely, instead, to phase in over a prolonged period during which cable systems will be boosting capacity. For three years broadcasters have been on record as supporting flexibility in smoothing the bumps in this must-carry implementation process. It is beyond time, therefore, for the Commission to adopt specific rules for implementing must-carry in the digital environment.

SRA is deeply concerned by the Commission's delay in adopting digital must-carry rules (or even launching this proceeding) and its apparent reliance on negotiations between the largest MSOs and network owned-and-operated stations, generally the most powerful stations in the marketplace, to determine DTV carriage arrangements that will profoundly affect the public's local television service. By following this course, it has placed at risk the DTV transition, the analog channel give-back and the public's local television service.

B. Other Carriage Rules Are Necessary To Assure A Fair And Effective Digital Marketplace.

This proceeding embraces not only the highly publicized must-carry issue but also numerous other carriage and compatibility matters. This latter set of important issues has been held hostage by stalemate on the former issue. Among these other digital carriage issues, of most concern to SRA members are the network nonduplication and syndicated exclusivity rules, which ensure respect for negotiated program rights in local markets. In the analog world, these rules make it possible for local markets to function rationally and effectively. Similarly in a DTV environment, cable systems should respect the contractual provisions between a local

station and its syndicator or network that assure exclusivity for programs within a particular market. Application of the nonduplication and exclusivity rules to DTV is necessary to protect freedom to contract and provide incentives for program development.<sup>9</sup>

There are other provisions governing digital signal carriage that the Commission should also promptly adopt. Some analog rules may be applied with little or no change, while others need to be adjusted to suit the differences in digital transmissions (*e.g.*, the digital signal has no vertical blanking interval and, accordingly, the Commission must recast for digital the requirements that pertain to VBI material in the analog world.) We summarize here these additional carriage requirements and refer to the fuller elaboration of these principles in the *Comments of MSTV*:

- Stations should be allowed to make separate must-carry/retransmission consent elections. Otherwise, as a practical matter, many of the DTV carriage requirements would be gutted.
- DTV signals should be carried without material degradation. Viewers should be allowed to access DTV signals in their original format. Absent broadcaster consent, cable systems should not be permitted to block or delete any of the bits comprising the free over-the-air broadcast material.
- Cable systems should be required to carry all the free over-the-air broadcast video, accompanying audio, closed-captioning, and program-related material. Only subscription services should not be entitled to carriage.
- The public should be able to locate broadcasters' DTV channels in the same way over cable that it can locate them over-the-air. This requirement would be comparable to the channel positioning requirement that applies in the analog environment. Because of the cable industry's participation in technical and standards developments, this requirement is even more cable-friendly in the digital environment than in analog.

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<sup>9</sup> For a fuller elaboration of these policy considerations, which the Commission has long endorsed, see the comments filed in this proceeding by the Association for Maximum Service Television, Inc. ("*Comments of MSTV*").



- Cable systems should not be permitted to discriminate against competing or independent program guides carried on their systems or to favor affiliated cable programming on their own program guides.
- DTV signals should be carried on a tier of service that is reasonably priced.

C. Cable Compatibility Issues Need The Commission's Closest Attention.

From early on, everybody involved in the digital transition has known that cable's role is critical. Exhibit One: the National Cable Television Association was one of the founding members of the Advanced Television Systems Committee ("ATSC") in 1982 and cable interests have participated in ATSC activities ever since. Exhibit Two: the Advisory Committee on Advanced Television Services reached out to insure effective cable industry representation in its deliberations. Exhibit Three: for years Cable Labs and the Advanced Television Test Center worked collaboratively to assure that the digital system implemented by broadcasters would be compatible with cable operations. Since 1991 the Commission's rulemaking notices in the advanced television proceeding also recognized the importance of cable carriage and compatibility between digital broadcast and cable operations.

The Commission has recently awakened to the dire state of digital cable compatibility (*e.g.*, the facts that cable systems may be incapable of transmitting digital broadcast signals at full resolution and that digital sets may not work with digital cable set-top boxes) and, to its credit, has tried to do something to encourage more inter-industry cooperation. SRA supports these efforts. But they are no substitute for establishing carriage rules to guide the cable and consumer equipment industries in forging consumer-friendly compatibility. The Commission would undoubtedly be more effective in dealing with compatibility issues if it had not early on forewarned the possibility of setting receiver and cable digital transmission standards.

Yet because it is also true that these technical issues are complex and seemingly ever-fluid, we appreciate the Commission's reluctance to adopt specific standards except as a last resort.

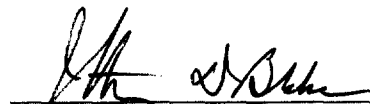
In these circumstances, SRA believes that the proper approach is for the Commission to set objectives (as reflected in Section II(B), above), actively monitor industry progress toward those objectives, and establish deadlines for their accomplishment.<sup>10</sup> The Commission is now on course in prodding cooperation from the cable and equipment manufacturing industries. But it needs to make up for lost time.

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For the reasons set forth herein, the Commission should take the steps described above.

Respectfully submitted,

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<sup>10</sup> By establishing principles for cable's transmission of digital signals, the Commission can avoid becoming embroiled in the technical details of how to achieve these objectives.